

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

GREGORY J. MARTUCCI,

Plaintiff

v.

MILFORD BOROUGH, *et al.*,

Defendants

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CIVIL ACTION NO. 3:17-1671

(JUDGE MANNION)

FILED  
SCRANTON

APR 05 2018

Per  DEPUTY CLERK

**ORDER**

In light of the memorandum issued this same day, **IT IS HEREBY ORDERED THAT:**

- (1) The defendants' motion to dismiss, (Doc. 16), plaintiff's amended complaint, (Doc. 14), is **GRANTED IN PART** and **DENIED IN PART**;
- (2) The plaintiff's claims against DaSilva in his official capacity are **DISMISSED WITH PREJUDICE**;
- (3) The defendants' motion to dismiss is **GRANTED** with respect plaintiff's requests for declaratory judgment and these claims for relief are **DISMISSED WITH PREJUDICE**;
- (4) The plaintiff's malicious prosecution claims against the two Borough defendants pursuant to the Fifth Amendment are **DISMISSED WITH PREJUDICE**;

- (5) The defendants' motion to dismiss the malicious prosecution claim against DaSilva in Count VI is **DENIED** and this claim will **PROCEED** against him;
- (6) The defendants' motion to dismiss the malicious prosecution claim against the Borough and DaSilva under *Monell* in Count V is **DENIED** and this claim will **PROCEED** against them;
- (7) The defendants' motion to dismiss DaSilva based on the qualified immunity defense is **DENIED**; and
- (8) Defendants Milford and DaSilva are directed to file their answer to the remaining claims against them in plaintiff's amended complaint **within 14 days** of the date of this Order.

s/ Malachy E. Mannion  
**MALACHY E. MANNION**  
United States District Judge

**Dated: April 5, 2018**

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